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10/601,323

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Rainer Biro

LZ-75

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7590

10/14/2004

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EXAMINER

NEGRON, ISMAEL


ART UNIT

PAPER NUMBER

2875

DATE MAILED: 10/14/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                               |                              |   |
|------------------------------|-------------------------------|------------------------------|---|
| <b>Office Action Summary</b> | Application No.<br>10/601,323 | Applicant(s)<br>BIRO, RAINER |   |
|                              | Examiner<br>Ismael Negron     | Art Unit<br>2875             |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 20 June 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 June 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>20030620</u> . | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Title*

1. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

The following title is suggested: **Illumination Device with Linearly-Moveable Brightness Adjusting Means.**

### *Drawings*

2. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "6" has been used to designate both "*receptacle*" (page 13, line 15) and "*holes*" (page 16, line 16).

The applicant is advised that the reference characters must be properly applied, with no single reference character being used for two different parts or for a given part and a modification of such part. See MPEP §608.01(g). Correction is required.

3. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required

corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 2-4 and 5 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 2 is indefinite as it is dependent on itself. The Examiner assumed that Claims 2 was intended to depend from independent Claim 1.

Claim 5 is indefinite as it is not clear what parameters, or features of the claimed illumination device are adjustable. The Examiner assumed that the continuously adjustable limitation was intended for the brightness level of the claimed light source.

Claims 3 and 4 are rejected for their dependency on indefinite Claim 2.

The applicant is strongly advised to verify the correctness of the Examiner's assumptions.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-9, 12-14, 16 and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by SHEEKS et al. (U.S. Pat. 1,313,957).

SHEEKS et al. discloses an illumination device having :

- **a main body (as recited in Claim 1)**, Figure 1, reference character D;
- **an electric light source (as recited in Claim 1)**, Figure 1, reference character L;
- **the light source being arranged in the main body (as recited in Claim 1)**, as seen in Figure 1;
- **a manually actuated operating element (as recited in Claim 1)**, Figure 4, reference number 26;
- **the operating element being arranged on the main body (as recited in Claim 1)**, as seen in Figure 4;
- **the operating element being configured to control the brightness of the light source (as recited in Claim 1)**, column 3, lines 41-52;

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- **the operating element being configured to be adjusted by linear movement (as recited in Claim 1), column 2, line 122 to column 3, line 3;**
- **the main body having a longitudinal axis (as recited in Claim 2), inherent;**
- **the linear movement of the operating element being realized parallel to the axis of the main body (as recited in Claim 2), as evidenced by Figure 4;**
- **the main body being rod-shaped (as recited in Claim 3), as seen in Figure 1;**
- **the linear movement being a sliding movement (as recited in Claim 4), column 2, line 122 to column 3, line 3;**
- **the brightness level of the light source being continuously adjustable (as recited in Claim 5), inherent;**
- **the operating element including an adjustable electric resistor (as recited in Claim 6), Figure 4, reference number 17;**
- **the electric resistor controlling the electric current intensity flowing to through the light source (as recited in Claim 6), column 3, lines 45-49;**
- **the electric resistor being a sliding potentiometer (as recited in Claim 7), as seen in Figure 4;**

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- **the potentiometer having a sliding contact (as recited in Claim 8), Figure 4, reference number 27;**
- **the sliding contact being secured on the main body (as recited in Claim 8), as seen in Figure 4;**
- **the potentiometer having a winding (as recited in Claim 8), Figure 4, reference number 17;**
- **the winding being movable relative to the sliding contact (as recited in Claim 8), as seen in Figure 4;**
- **a mechanical resistance element (as recited in Claim 9), Figure 4, reference number 27;**
- **the resistance element providing a mechanical resistance when moving the operating element between a rest position without illumination output, and an operating position with illumination output (as recited in Claim 9), inherent;**
- **an indicator device (as recited in Claim 12), Figure 1, reference number 24;**
- **the indicator device providing visual representation of a brightness level of the illumination device (as recited in Claim 12), as seen in Figure 1;**
- **the indicator device representing the brightness level uniformly in steps (as recited in Claim 13), inherent;**

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- **a fastening device (as recited in Claim 14), Figure 2, reference number 6;**
- **the fastening device being for detachably securing the illumination device to objects (as recited in Claim 14), inherent;**
- **at least one of the operating element, the electric resistor, the indicator device and the mechanical resistance element being arranged in the area of the fastening device (as recited in Claim 16), as seen in Figure 1; and**
- **at least one of the operating element, the electric resistor, the indicator device and the mechanical resistance element being substantially integrated into the fastening device (as recited in Claim 17), as seen in Figure 2.**

6. Claims 1-10, 12, 13 and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by WILKINSON (U.S. Pat. 2,416,558).

WILKINSON discloses an illumination device having :

- **a main body (as recited in Claim 1), Figure 1, reference number 11;**
- **an electric light source (as recited in Claim 1), column 2, lines 27-29;**
- **the light source being arranged in the main body (as recited in Claim 1), column 2, lines 27-29;**



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- **a manually actuated operating element (as recited in Claim 1),**  
Figure 1, reference number 23;
- **the operating element being arranged on the main body (as**  
**recited in Claim 1), as seen in Figure 1;**
- **the operating element being configured to control the**  
**brightness of the light source (as recited in Claim 1), column 2,**  
lines 29-33;
- **the operating element being configured to be adjusted by**  
**linear movement (as recited in Claim 1), column 2, lines 4-6;**
- **the main body having a longitudinal axis (as recited in Claim**  
**2), inherent;**
- **the linear movement of the operating element being realized**  
**parallel to the axis of the main body (as recited in Claim 2), as**  
evidenced by Figure 1;
- **the main body being rod-shaped (as recited in Claim 3), as**  
seen in Figure 1;
- **the linear movement being a sliding movement (as recited in**  
**Claim 4), column 2, lines 4-6;**
- **the brightness level of the light source being continuously**  
**adjustable (as recited in Claim 5), column 2, lines 29-34;**
- **the operating element including an adjustable electric resistor**  
**(as recited in Claim 6), Figure 1, reference number 14;**

- **the electric resistor controlling the electric current intensity flowing to through the light source (as recited in Claim 6), column 2, lines 29-34;**
- **the electric resistor being a sliding potentiometer (as recited in Claim 7), as seen in Figure 1;**
- **the potentiometer having a sliding contact (as recited in Claim 8), Figure 3, reference number 27;**
- **the sliding contact being secured on the main body (as recited in Claim 8), as seen in Figure 3;**
- **the potentiometer having a winding (as recited in Claim 8), Figure 1, reference number 14;**
- **the winding being movable relative to the sliding contact (as recited in Claim 8), as seen in Figure 3;**
- **a mechanical resistance element (as recited in Claim 9), Figure 2, reference number 28;**
- **the resistance element providing a mechanical resistance when moving the operating element between a rest position without illumination output, and an operating position with illumination output (as recited in Claim 9), column 2, lines 17-22;**
- **the operating element including a spring, Figure 3, reference number 27;**

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- **the spring exerting a force when moving the operating element between the rest position and the operating position (as recited in Claim 10), as evidenced by Figure 3;**
- **the mechanical resistance element being a profile change on the main body (as recited in Claim 10), Figure 2, reference number 28;**
- **an indicator device (as recited in Claim 12), Figure 1, reference number 23;**
- **the indicator device providing visual representation of a brightness level of the illumination device (as recited in Claim 12), as seen in Figure 3;**
- **the indicator device representing the brightness level uniformly in steps (as recited in Claim 13), inherent;**
- **the main body including a housing (as recited in Claim 18), Figure 1, reference number 11; and**
- **the housing receiving at least one battery for powering the light source (as recited in Claim 18), column 1, lines 33-35.**

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over WILKINSON (U.S. Pat. 2,416,558).

WILKINSON discloses an illumination device having:

- **a main body (as recited in Claim 1), Figure 1, reference number 11;**
- **an electric light source (as recited in Claim 1), column 2, lines 27-29;**
- **the light source being arranged in the main body (as recited in Claim 1), column 2, lines 27-29;**
- **a manually actuated operating element (as recited in Claim 1), Figure 1, reference number 23;**
- **the operating element being arranged on the main body (as recited in Claim 1), as seen in Figure 1;**
- **the operating element being configured to control the brightness of the light source (as recited in Claim 1), column 2, lines 29-33;**

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- **the operating element being configured to be adjusted by linear movement (as recited in Claim 1), column 2, lines 4-6;**
- **the operating element including an adjustable electric resistor (as recited in Claim 6), Figure 1, reference number 14;**
- **the electric resistor controlling the electric current intensity flowing to through the light source (as recited in Claim 6), column 2, lines 29-34;**
- **a mechanical resistance element (as recited in Claim 9), Figure 2, reference number 28;**
- **the resistance element providing a mechanical resistance when moving the operating element between a rest position without illumination output, and an operating position with illumination output (as recited in Claim 9), column 2, lines 17-22;**
- **the operating element including a spring, Figure 3, reference number 27;**
- **the spring exerting a force when moving the operating element between the rest position and the operating position (as recited in Claim 10), as evidenced by Figure 3; and**
- **the mechanical resistance element being a profile change on the main body (as recited in Claim 10), Figure 2, reference number 28.**

WILKINSON discloses all the limitations of the claims, except the profile change being a protrusion (as recited in Claim 11).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide a protrusion on the main body instead of the patented recess, since it has been held by the courts that a mere reversal of the essential working parts of a device involves only routine skill in the art. *In re Gazda*, 219 F.2d 449, 104 USPQ 400 (CCPA 1955). In this case, WILKINSON shows a recess 28 formed on the main body 11, such recess matching enlarged portion 26 to provide a mechanical resistance against movement of the operating member 23 from a rest position to an operating position (as shown in Figure 3). Reversing the arrangement of such recess/enlarged portion structure

8. Claims 14-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over WILKINSON (U.S. Pat. 2,416,558) and McDERMOTT (U.S. Pat. 4,517,628).

WILKINSON discloses an illumination device having:

- **a main body (as recited in Claim 1)**, Figure 1, reference number 11;
- **an electric light source (as recited in Claim 1)**, column 2, lines 27-29;
- **the light source being arranged in the main body (as recited in Claim 1)**, column 2, lines 27-29;

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- **a manually actuated operating element (as recited in Claim 1),**  
Figure 1, reference number 23;
- **the operating element being arranged on the main body (as**  
**recited in Claim 1), as seen in Figure 1;**
- **the operating element being configured to control the**  
**brightness of the light source (as recited in Claim 1), column 2,**  
lines 29-33;
- **the operating element being configured to be adjusted by**  
**linear movement (as recited in Claim 1), column 2, lines 4-6;**
- **the operating element including an adjustable electric resistor**  
**(as recited in Claim 6), Figure 1, reference number 14;**
- **the electric resistor controlling the electric current intensity**  
**flowing to through the light source (as recited in Claim 6),**  
column 2, lines 29-34;
- **a mechanical resistance element (as recited in Claim 9), Figure**  
3, reference number 27;
- **the resistance element providing a mechanical resistance**  
**when moving the operating element between a rest position**  
**without illumination output, and an operating position with**  
**illumination output (as recited in Claim 9), inherent;**
- **an indicator device (as recited in Claim 12), Figure 1, reference**  
number 23; and

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- **the indicator device providing visual representation of a brightness level of the illumination device (as recited in Claim 12), as seen in Figure 3.**

WILKINSON discloses all the limitations of the claims, except:

- a fastening device (as recited in Claim 14);
- the fastening device being for detachably securing the illumination device to objects (as recited in Claim 14);
- the fastening means being a clip (as recited in Claim 15);
- at least one of the operating element, the electric resistor, the indicator device and the mechanical resistance element being arranged in the area of the fastening device (as recited in Claim 16); and
- at least one of the operating element, the electric resistor, the indicator device and the mechanical resistance element being substantially integrated into the fastening device (as recited in Claim 17).

McDERMOTT discloses an illumination device having:

- **a main body (as recited in Claim 1), Figure 2, reference number 11;**
- **an electric light source (as recited in Claim 1), Figure 2, reference number 16;**



- **the light source being arranged in the main body (as recited in Claim 1), as seen in Figure 2;**
- **a manually actuated operating element (as recited in Claim 1), Figure 1, reference number 41;**
- **the operating element being arranged on the main body (as recited in Claim 1), as seen in Figure 2;**
- **the operating element being configured to control operation of the light source (as recited in Claim 1), column 5, lines 10-15;**
- **the operating element being configured to be adjusted by linear movement (as recited in Claim 1), column 5, lines 10-15;**
- **a mechanical resistance element (as recited in Claim 9), Figure 10, reference number 56;**
- **the resistance element providing a mechanical resistance when moving the operating element between a rest position without illumination output, and an operating position with illumination output (as recited in Claim 9), column 5, lines 10-15;**
- **an indicator device (as recited in Claim 12), Figure 2, reference number 41;**
- **the indicator device providing visual representation of the status of the illumination device (as recited in Claim 12), as evidenced by Figure 7;**

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- **a fastening device (as recited in Claim 14), Figure 2, reference number 46;**
- **the fastening device being for detachably securing the illumination device to objects (as recited in Claim 14), column 4, lines 21-25;**
- **the fastening means being a clip (as recited in Claim 15), Figure 2, reference number 46;**
- **at least one of the operating element, the indicator device and the mechanical resistance element being arranged in the area of the fastening device (as recited in Claim 16), as seen in Figure 7; and**
- **at least one of the operating element, the indicator device and the mechanical resistance element being substantially integrated into the fastening device (as recited in Claim 17), as seen in Figure 7.**

It would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to combine the teachings of WILKINSON and McDERMOTT to obtain an illumination device capable of adjusting the intensity of the light source and been clipped over items of clothing, as per the teachings of both WILKINSON and McDERMOTT.

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9. Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over WILKINSON (U.S. Pat. 2,416,558).

WILKINSON discloses an illumination device having:

- **a main body (as recited in Claim 1)**, Figure 1, reference number 11;
- **an electric light source (as recited in Claim 1)**, column 2, lines 27-29;
- **the light source being arranged in the main body (as recited in Claim 1)**, column 2, lines 27-29;
- **a manually actuated operating element (as recited in Claim 1)**, Figure 1, reference number 23;
- **the operating element being arranged on the main body (as recited in Claim 1)**, as seen in Figure 1;
- **the operating element being configured to control the brightness of the light source (as recited in Claim 1)**, column 2, lines 29-33; and
- **the operating element being configured to be adjusted by linear movement (as recited in Claim 1)**, column 2, lines 4-6.

WILKINSON discloses all the limitations of the claims, except the illumination device being in the form of one of an otoscope, an ophthalmoscope, and a manual slit lamp (as recited in Claim 19).

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It would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to use the illumination device of WILKINSON, since the patented structure includes all the claimed structural limitations. Selecting a specific application would amount to a recitation of the intended use of the patented invention, without resulting in any structural difference between the claimed invention and the structure disclosed by WILKINSON, and therefore fails to patentably distinguish the claimed invention from the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).

#### ***Relevant Prior Art***

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

**Wappler et al.** (U.S. Pat. 604,949), **Elmwall** (U.S. Pat. 1,706,570), **Dircksen et al.** (U.S. Pat. 2,784,304), **Edelson** (U.S. Pat. 3,800,136), **Gutai** (U.S. Pat. 3,885,211), **Flores** (U.S. Pat. 4,048,631) and **Olds** (U.S. Pat. 2,312,670) disclose illumination devices having adjustable resistors to adjust the brightness of the light source by controlling the current that flows through such light source. Some of the disclose adjustable resistors are sliding potentiometers.

**Sasaki** (U.S. Pat. 3,633,146), **Klug** (U.S. Pat. 4,005,381), **Miyamoto** (U.S. Pat. 4,369,424), **Doong** (U.S. Pat. 5,165,785), **Black et al.** (U.S. Pat. 5,959,525), **Thayer** (U.S. Pat. 1,660,979) and **Yano et al.** (U.S. Pat. Re. 27,863) disclose sliding

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potentiometer having ON/OFF switching structures, such switching structures including mechanical resistance devices for resisting movement from an OFF position to an ON position.

**Roberts** (U.S. Pat. 4,484,253), **Foltz** (U.S. Pat. 4,495,551) and **Johns** (U.S. Pat. 4,516,194) disclose illumination devices having means to secure the devices to objects, the fastening means including clips.

**De Zeng** (U.S. Pat. 1,587,151), **Wilson** (U.S. Pat. 1,795,691), **Kruglick** (U.S. Pat. 3,050,049), **Heine** (U.S. Pat. 3,643,083), **Berndt** (U.S. Pat. 3,903,870), **Newman et al.** (U.S. Pat. 4,147,163) and **Tiller** (U.S. Pat. 4,991,069) disclose otoscopes and ophthalmoscopes having a tubular body, a light source, batteries for powering the light source and a switch for completing the circuit. Some disclose sliding operating members.

### ***Conclusion***

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ismael Negrón whose telephone number is (571) 272-2376. The examiner can normally be reached on Monday-Friday from 9:00 A.M. to 6:00 P.M.

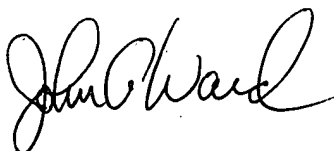
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sandra L. O'Shea, can be reached on (571) 272-2378. The facsimile machine number for the Art Group is (703) 872-9306.

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12. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications maybe obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, go to <http://pair-direct.uspto.gov>. Should you have questions on access to Private PAIR system, contact the Electronic Business Center (EBC) toll-free at 866-217-9197.

  
lnr

October 7, 2004

  
**JOHN ANTHONY WARD**  
**PRIMARY EXAMINER**